

REMARKS

This Amendment and its accompanying remarks are intended to fully respond to the Office Action dated April 28, 2005. In this Office Action, claims 1-4, 6-8, 12-18 and 22-26 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,064,094 ("Roos et al."); claims 5, 9-11, 19-21 and 27-30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Roos et al. in view of European Patent Application WO 02/058528 ("McNabb et al.").

Reconsideration of the application is respectfully requested in light of the above amendments and in consideration of the following remarks.

A. Claim Re-Numbering

Applicant notes an inaccuracy in the numbering of the claims of this application as originally filed. In particular, the original filing of this application included claim 30, but no claim 29. Accordingly, claim 30 has been re-numbered claim 29 and the following remarks address the outstanding rejections to the claims of this application with reference to the claims as renumbered herein.

B. Analysis

Applicant hereby amends each of the independent claims in this application without prejudice. With that said, Applicant reserves the right to re-file the subject matter and scope recited in the original claims in a later-filed continuing application. Before addressing the patentability of the amended claims in detail, a brief summary of the present invention and the teachings of Roos et al. are provided below.

In general, the present invention is directed to an improved container for holding a dispensable product for dispensing to a dispenser for further dispensing. The improved container provides protection to users by preventing contact to the dispensable product contained therein. The container includes a mechanical interlock for use in mating the container to the dispenser to form a passageway through which the dispensable product can be provided to the dispenser. Even though the dispensable product is enabled to pass from the container to the dispenser when the mechanical interlock is mated thereto, users are still prevented from contacting the

dispensable product. User contact of the dispensable product is therefore prevented both while the container is mated to the dispenser and prior to such mating.

Turning to the cited art, Roos et al. also describes a container (i.e., “pellet container 18”) adapted to mate with a dispenser (i.e., “motor and rotor assembly 14”). Further, the container (18) taught by Roos et al. also includes a mechanical interlock (21) that enables the container (18) to be mated to the dispenser (14) in a manner such that users are prevented contact with the content of the container (18). However, unlike the present invention, Roos et al. does not teach this container (18) providing any functionality for preventing user contact with its contents at times when the container (18) is not mated to the dispenser (14). Roos et al. simply inherently teaches the container (18) having an opening, which subjects the content of the container (18) to users unless secured to the dispenser (14) by way of a mechanical interlock (21). It is entirely possible for the contents of this container (18) to escape the container (18) during installation of the container (18) to the dispenser (14) (e.g., if such installation requires the container (18) to be installed to the dispenser (14) with the opening facing down).

With these general distinctions in mind, the claims, as amended, are now addressed with reference to specific recitals that differentiate the present invention as recited therein from Roos et al.

1. **Claims 12-21**

Independent claim 12 recites the distributable container having a cap adapted to fit over and secure the opening of the distributable container. The cap is operable to prevent contact with the dispensable product in the container by a user when the mechanical interlock is not mated to the dispenser. The cap is also operable to provide a passageway through which the dispensable product is provided to the dispenser when the mechanical interlock is mated to the dispenser. The cap is therefore explicitly recited in claim 12 to embody certain functionality depending on whether the container is mated or unmated to the dispenser. That is, the cap prevents user contact when the container is unmated from the dispenser and provides a passageway for the dispensable product to the dispenser when the container is mated to the dispenser.

In contrast, Roos et al. is completely silent as to any covering on the opening of the container (18) shown in FIGS. 2, 3 and 4. Indeed, the implementation taught by Roos et al. is completely the opposite to that recited in claim 12. While Roos et al. teaches a cap with an

opening (i.e., “dam 16”), this cap (16) embodies a component of the dispenser (14) and not the container (18). FIG. 4 is exemplary of this distinction by showing the dispenser (14) and the container (18) separated with the dispenser (14). Clearly, the cap (16) is shown in this figure as being a component of the dispenser (14) and only coupled to the container (18) when the container (18) is mated to the dispenser (14) by way of the mechanical interlock (21). Therefore, the cap (16) taught by Roos et al. necessarily cannot read on the cap recited in claim 12 and, as such, Roos et al. fails to anticipate this independent claim.

Even further, the illustration in FIG. 4 actually teaches away from the present invention by suggesting an approach for mating the container (18) to the dispenser (14) that involves inverting the dispenser (14). See Roos et al., at Col. 3, lines 1-4 (“A frictional fit retainer 45 is seated in the housing 19 and adjacent the dam member 16 for holding the dam member 16 in place when the motor and rotor assembly 14 is *inverted* as shown in FIG. 4.”) (emphasis added). In order to mate the container (18) with the dispenser (14), the container (18) is maintained upright and the dispenser (14) inverted. After such mating, these interlocked components are then inverted such that the dispenser (14) is upright and the container (18) inverted, as explained in even greater detail in the Abstract, an excerpt of which is provided below:

A pellet dispenser unit in which a container of pellets can be attached to a motor and rotor assembly while the container is in an upright position. After attachment with the container, the container is inverted and the motor and rotor with the container are placed in a housing member from which the pellets are dispensed.

Because Roos et al. teaches an approach in which a dispenser (14) is inverted for mating to a container (18), those of skill in the art would have no motivation to modify the container (18) to include the cap (16) taught by Roos et al. as being part of the dispenser (14). Roos et al. simply teaches solving the problem of user contact in a different way – by instructing those of such skill to invert the dispenser (14). The present invention, in contrast, solves the problem of user contact in a different manner that does not require inverting the recited dispenser. Indeed, an embodiment of the present invention involves the dispenser being “fixed” at a dispensing location, an implementation that certainly would not work using the approach taught by Roos et al.

In view of the foregoing, claim 12 is believed allowable over Roos et al. from both an anticipatory and an obviousness standpoint. Claims 13-21 each depend directly

or indirectly from claim 12 and, consequently, are also believed allowable over Roos et al.

2. Claims 1-11 and 22-29

In general, claim 1 recites a system having the improved container according to the present invention and claim 22 recites a method of using the improved container to dispense a product to a dispenser. Both claims recite the container as having a cap that secures the opening and a disc. The cap has an opening positioned off-center from its central axis and the disc is rotatably positioned about the central axis of the cap. The disc also has an opening and, subject to rotation of the disc, the opening of the disc and the opening of the cap align to provide a passageway through which a product contained in the container is dispensed therefrom. According to both claims 1 and 22, such rotation is provided when the container is mated to the dispenser and, consequently, the contained product is recited as being dispensed to the dispenser.

In contrast, Roos et al. teaches implementing the functionality of the cap and the disc in the actual dispenser (14) and not the container (18). For example, FIG. 4 shows the cap (16) and a disc (15) adjacent to one another as internal components to the dispenser (14). Not only does the container (18) fail to include these components, as explicitly recited in both claims 1 and 22, but by placing these components in the dispenser (14), Roos et al. lacks any motivation for modifying the container (18) in the direction of the present invention. Point being, with the cap (16) and disc (15) being in the dispenser (14), there simply is no need for such components in the container (18). To read such a suggestion into Roos et al. could only be made through the use of impermissible hindsight. With that said, claims 1 and 22 are both believed allowable over Roos et al. as are claims 2-11 and 23-29, each of which depend from claims 1 or 22 either directly or indirectly.

CONCLUSION

This Amendment fully responds to the Office Action mailed on April 28, 2005. Still, the Office Action may contain arguments and rejections and that are not directly addressed by this Amendment due to the fact that they are rendered moot in light of the preceding arguments in favor of patentability. Hence, failure of this Amendment to directly address an argument raised in the Office Action should not be taken as an indication that the Applicant believes the argument to have merit. Furthermore, the claims of the present application may include other elements, not discussed in this Amendment, which are not shown, taught, or otherwise suggested by the art of record. Accordingly, the preceding arguments in favor of patentability are advanced without prejudice to other bases of patentability.

Should the Examiner have any remaining questions or concerns, he/she is encouraged to contact the undersigned attorney by telephone to expeditiously resolve such concerns. Because this Amendment is being filed after July 28, 2005, but no later than August 29, 2005 (August 28, 2005 occurred on a Sunday), enclosed herewith is a petition for a one-month extension of time under 37 C.F.R. §1.136(a) as well as a check in the amount of \$120.00 in order to maintain pendency of this application. No other fees are believed due with this Amendment. However, if this is not the case, please charge any such fees to Deposit Account No. 13-2725. Alternatively, please credit any overpayment to Deposit Account No. 13-2725.

Dated: August 29, 2005

Respectfully submitted,



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